

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j)  
of the Communications Act  
— Competitive Bidding for  
Commercial Broadcast and  
Instructional Television Fixed  
Service Licenses )

MM Docket No. 97-234

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings )

GC Docket No. 92-52

Proposals to Reform the  
Commission's Comparative  
Hearing Process to Expedite  
the Resolution of Cases )

GEN Docket No. 90-264

To: The Commission

**JOINT COMMENTS**

**SCHWARTZ, WOODS & MILLER  
On Behalf Of**

Board of Trustees of Community-  
Technical Colleges (Connecticut)  
Boston Catholic Television Center, Inc.  
Catholic Diocese of Youngstown  
Dutchess Community College  
Hartnell College

Jefferson County Public Schools  
New Jersey Public Broadcasting  
Authority  
Santa Clara County Office of  
Education  
University of North Carolina  
University of Southern California

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To: The Commission

**JOINT COMMENTS**

Schwartz, Woods and Miller, on behalf of the Instructional Television Fixed Service (ITFS) licensees listed on Attachment A, files these Joint Comments in the above-referenced Notice of Proposed Rule Making (Notice) concerning broadcast auctions. In support thereof, the following is shown:

1. The parties to these Joint Comments (Commenters) include a broad range of ITFS licensees, permittees and applicants which provide or propose to provide instructional and educational programming for audiences in many communities and areas throughout the United States. The Commenters are vitally concerned that the Commission's proposals in this proceeding, which are aimed at auction processes for commercial radio and

television broadcast licensees, should not have adverse consequences, either intended or unintended, for ITFS entities.

2. The Commission's Notice, which seeks to implement provisions of the Balanced Budget Act of 1997, proposes to award most initial commercial radio and television broadcast licenses through auctions. In paragraph 100 of its Notice, the Commission seeks comments on "whether we must, and if not, whether we should, apply competitive bidding to mutually exclusive ITFS applications."

3. This proceeding is of enormous importance to ITFS licensees, permittees and applicants. In the Commenters' view, the Commission's proposals would improperly impose auction procedures upon ITFS entities. The Commenters urge the Commission not to adopt this proposal regarding auction proposals for ITFS. This proposal would have a devastating impact upon ITFS licensees, which regularly confront financial difficulties due to their noncommercial educational nature. These difficulties would almost certainly preclude them from being able to participate equally in the competitive bidding process. It is unfair to impose any such burden upon ITFS applicants proposing a noncommercial instructional and educational service.

4. The Commenters strongly believe that the Commission should not impose its proposed auction procedures upon ITFS entities. As the Commission acknowledges, ITFS systems are akin to noncommercial educational broadcast stations, which are themselves exempt from auction procedures. In fact, many ITFS systems are licensed to noncommercial educational broadcast stations. These ITFS stations perform valuable services in the provision of instructional, educational and informative programming to area schools, colleges, universities, institutions and individuals. Like noncommercial educa-

tional stations, ITFS stations are exempt from filing fees. See Section 1.1114(e)(4). See also Establishment of a Fee Program, 65 RR 2d 513, 518 (1988). Moreover, the Commission has adopted a comparative point selection procedure for mutually exclusive applications, which has furthered the sound objective of a locally-based instructional service by qualified applicants and has proven to be relatively efficient and expeditious as well. See Section 74.913 of the Commission's rules. Similarly, the Commission's current policies regarding the settlements of ITFS applications have resulted in the timely resolution of a significant number of application conflicts resulting in expedited release of channels for service.

5. The imposition of auction procedures upon ITFS applicants is nowhere specifically mandated by the Balanced Budget Act of 1997 and is entirely inappropriate for this educational service. The Commenters submit that the Commission does not have any specific authority to mandate auctions for ITFS entities. Moreover, any such imposition by exercise of the Commission's general discretion would have disastrous consequences upon ITFS applicants, many of whom have insufficient funds to participate in the auction process. In addition, adoption of any auction process for ITFS stations would likely dilute both the quantity and the quality of noncommercial instructional and educational programming available to the stations. In the Commenters' view, the use of auctions in the context of ITFS applications would likewise lead to the cutting off of a significant means of media access to schools, colleges and other educational institutions across the country.

6. The Commenters urge the Commission to restrict this proceeding solely to commercial broadcast proposals. That was the Commission's stated intent, and it also specifically noted that it would not, pursuant to Section 309(j)(2) of the Act, consider

noncommercial educational and public broadcast stations. Consonant with these determinations, the Commission should not apply its proposed auction procedures to the similar noncommercial instructional and educational services offered by ITFS entities.

Respectfully submitted,

SCHWARTZ, WOODS & MILLER

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Robert A. Woods

By: Malcolm G. Stevenson  
Malcolm G. Stevenson

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Its Attorneys

January 26, 1998

**ATTACHMENT A**

**Board of Trustees of Community-Technical Colleges (Connecticut)**

Bozrah/Farmington/Seymour, CT

**Boston Catholic Television Center, Inc.**

Newton, MA

**Catholic Diocese of Youngstown**

Youngstown/Salem, OH

**Dutchess Community College**

Poughkeepsie, NY

**Hartnell College**

Salinas, CA

**Jefferson County Public Schools**

Louisville, KY

**New Jersey Public Broadcasting Authority**

Trenton, NJ, et al.

**Santa Clara County Office of Education**

Milpitas/Gilroy, CA

**University of North Carolina**

Raleigh, NC, et al.

**University of Southern California**

Los Angeles, CA